

No. 13-1012 PO

On October 15, 2013, the Director filed a motion for summary decision (“the motion”). We allowed Webb until October 30, 2013 to respond to the motion, but he did not respond. Pursuant to 1 CSR 15-3.446(6)(A), we may decide a motion for summary decision if a party establishes facts that entitle that party to a favorable decision and no party genuinely disputes such facts. Those facts may be established by stipulation, pleading of the adverse party,

or other evidence admissible under the law.¹ The motion relies on certified court records, which are admissible pursuant to § 536.070(10)² and § 490.130, and a notarized affidavit from the Peace Officer Standards & Training program. The following facts, based on that evidence, are undisputed.

Findings of Fact

1. Webb was a licensed peace officer at all relevant times. His license is still current and active.

2. On July 25, 2012, Webb was indicted on three counts of statutory sodomy in the second degree in violation of § 566.064,³ a Class C felony.

3. On September 13, 2012, Webb pled guilty to all three counts and was sentenced to 160 days' confinement in the county jail on one count and five years' confinement in the Missouri Department of Corrections on the other two counts. The trial court suspended the execution of the five-year sentences and placed Webb on probation for five years.

Conclusions of Law

We have jurisdiction to hear this case.⁴ The Director has the burden of proving that Webb has committed an act for which the law allows discipline.⁵ The Director alleges that there is cause for discipline under § 590.080.1(2):

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

¹1 CSR 15-3.446(6)(B).

²Statutory references are to RSMo Supp. 2012 unless otherwise noted.

³RSMo 2000.

⁴Section 590.080.2.

⁵*Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

Webb pled guilty to three counts of second-degree statutory sodomy. Second-degree statutory sodomy is a Class C felony and, therefore, a criminal offense.⁶ Webb was sentenced on all three counts. All of these convictions resulted in final judgments.⁷ A final judgment resulting from a guilty plea collaterally estops Webb from arguing that he did not commit the criminal offenses.⁸ There is cause to discipline his license under § 590.080.1(2).

Summary

Webb is subject to discipline under § 590.080.1(2). We cancel the hearing.

SO ORDERED on November 12, 2013.

\s\ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner

⁶ Section 556.016, RSMo 2000.

⁷ *State v. Plastec, Inc.*, 961 S.W.2d 906, 907 (Mo.App. E.D. 1998); *State v. Hendel*, 468 S.W.2d 664, 665 - 666 (Mo.App. St.L.D. 1971)

⁸ *James v. Paul*, 49 S.W.3d 678, 682-83 (Mo. 2001); *Carr v. Holt*, 134 S.W.3d 647, 649 (Mo. App. E.D. 2004).